

# **EXHIBIT D**



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FOUNDED 1866

September 13, 2011

**By Electronic Mail**

Mary Rose Alexander  
LATHAM & WATKINS LLP  
233 South Wacker Drive, Suite 5800  
Chicago, IL 60606

Re: Appleton Papers Inc., et al. v. George Whiting Paper Co., et al.

Dear Mary Rose:

This letter is in response to your September 1, 2011, letter regarding NCR's August 23, 2011, production of documents (the "August 23 Production").

The 24 laboratory notebooks included in the August 23 Production were not produced during Phase I of the litigation because these notebooks are not related to the issues identified for discovery in Phase I of this litigation: "(i) when each party knew, or should have known, that recycling NCR-brand carbonless paper would result in the discharge of PCBs to a waterbody, thereby risking environmental damage; and (ii) what, if any, action each party took upon acquiring such knowledge to avoid the risk of further PCB contamination." As has been described previously on a number of occasions, NCR has conducted multiple searches over the years for historical documents potentially relevant to the issues in this litigation. These investigations located a number of laboratory notebooks, which were produced with NCR's initial disclosures. *See, e.g.*, NCR-FOX-0307078; NCR-FOX-0499516. NCR conducted additional investigations in 2009 in response to Defendants' Phase I discovery requests. As a result of these investigations, NCR located and produced more laboratory notebooks relating to the Phase I issues. *See, e.g.*, NCR-FOX-0525239; NCR-FOX-0566534; NCR-FOX-0566603; NCR-FOX-0566659; NCR-FOX-0566766; NCR-FOX-0566850; NCR-FOX-0566944. However, the laboratory notebooks included in the August 23 Production were not produced at that time because they did not contain information responsive to the Phase I discovery requests. While each has occasional references to NCR Paper, none of these references is relevant to the specific, narrow set of issues on which the Court permitted discovery—a restriction that was imposed at Defendants' urging.

When NCR received GP's first set of additional discovery requests in the spring of 2011, it undertook further internal searches for documents, given the much broader scope of GP's requests in this phase. In particular, NCR conducted fresh investigations of the documents

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contained at the NCR Archive maintained by Dayton History. As a result of these additional searches, NCR identified the laboratory notebooks included in the August 23 Production as containing information potentially responsive to GP's new document requests. The claim for relevance is marginal at best, but NCR decided to err on the side of being overinclusive.

You also ask NCR to explain why the laboratory notebooks were not produced until August 23, even though GP's requests were served on April 26 and July 21. NCR has been endeavoring to identify and produce responsive documents as quickly and efficiently as possible. However, the reality is that searching for, collecting, reviewing, and scanning historical documents is a time- and labor-intensive process. As I am certain you know, this is particularly true with respect to old, bound, and handwritten documents like laboratory notebooks, which must be handled carefully. NCR has been producing, and will continue to produce, any responsive documents that are identified in its ongoing investigation promptly and on a rolling basis.

Finally, you ask "what efforts NCR plans to undertake to insure that [there are] no additional laboratory notebooks" responsive to GP's discovery requests. As described in Jeff Opt's deposition, Dayton History's staff compiled an index of all historical laboratory notebooks located within the NCR Archive at Dayton History.<sup>1</sup> In responding to Defendants' multiple discovery requests, including GP's discovery requests in this phase of litigation, NCR reviewed this index and believes it has identified and produced all potentially responsive laboratory notebooks. NCR has stated that it will produce this index of laboratory notebooks upon entry of an appropriate protective order. At the meet-and-confer conference held at your office on June 29, 2011, you stated that you would prepare a proposed protective order, but we have not yet received any such proposal. Please let us know whether you are still planning to prepare a proposed order. Once a protective order is entered and the index is produced, if there are any notebook entries that GP believes to be responsive to its discovery requests, but which have not been produced in this case, NCR will make those notebooks available for inspection by GP.<sup>2</sup>

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<sup>1</sup> NCR has not found any indication that laboratory notebooks are located within NCR's other off-site historical document storage facility.

<sup>2</sup> In your letter, you also request the production of a list of laboratory notebooks that were identified based on your review of laboratory notebooks and indices produced by API. However, most of the notebook number, author, and date fields do not correspond to the entries in NCR's index of laboratory notebooks (e.g., notebook number 1140 on your list is identified as a notebook authored by Marjorie J. Cormack for the period 1954-1956, but that notebook on NCR's index is identified as a notebook titled "Marking Inks for Coated Fabrics - Contract No. AF-33 (616)," dated 1956-1957). As a result, we are not able to accurately identify the notebooks you seek. We suggest that, as described above, you review the laboratory notebook index once it is produced, and identify any notebooks you wish to inspect based on the entries in the index.

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Regards,

/s Evan B. Westerfield

Evan B. Westerfield

cc: Darin McAtee  
Ronald Ragatz  
Michael Hermes  
Karl Lytz  
Margrethe Kearney